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No. 93-1660  
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In The  
**Supreme Court of the United States**  
**October Term, 1994**

—————♦—————  
**STATE OF ARIZONA,**

*Petitioner,*

v.

**ISAAC EVANS,**

*Respondent.*

—————♦—————  
**On Writ Of Certiorari To  
The Supreme Court Of Arizona**

—————♦—————  
**BRIEF OF PETITIONER**

—————♦—————  
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**QUESTION PRESENTED**

Where evidence has been seized incident to an arrest based upon a police computer record of an open warrant that had actually been quashed 17 days earlier, does the exclusionary rule require suppression of the evidence regardless of whether police personnel or court personnel were responsible for the quashed warrant's continued presence in the police computer record?

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES .....	iii
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISION INVOLVED.....	1
STATEMENT OF THE CASE.....	2
A. The Arrest of Evans and Seizure of Evidence ..	2
B. The Motion to Suppress .....	3
C. The Evidentiary Hearing .....	3
D. The Trial Judge's Ruling.....	5
E. The Appeal.....	6
SUMMARY OF ARGUMENT.....	7
ARGUMENT .....	7
CONCLUSION .....	13

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Illinois v. Gates</i> , 426 U.S. 213 (1983) .....	8, 10
<i>Illinois v. Krull</i> , 480 U.S. 340 (1987). ....	8, 10
<i>Massachusetts v. Sheppard</i> , 468 U.S. 981 (1984).....	9
<i>Michigan v. Tucker</i> , 417 U.S. 433 (1974) .....	8, 10
<i>United States v. Calandra</i> , 414 U.S. 338 (1974) .....	8, 10
<i>United States v. Leon</i> , 468 U.S. 897 (1984) .....	<i>passim</i>
<i>United States v. Peltier</i> , 422 U.S. 531 (1975). ....	8
<b>CONSTITUTIONAL PROVISIONS</b>	
Fourth Amendment.....	1, 7, 8, 9, 10, 11
<b>STATUTES AND RULES</b>	
United States Code 28 U.S.C. §1257(a) .....	1

## **OPINIONS BELOW**

The opinion of the Supreme Court of Arizona is reported at 177 Ariz. 201, 866 P.2d 869 (1994). (Appendix to the Petition [hereinafter Pet. App.] at 1a.) The opinion of the Arizona Court of Appeals is reported at 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992) (Pet. App. at 22a.)

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## **JURISDICTION**

The opinion of the Supreme Court of Arizona was filed on January 13, 1994. The petition for writ of certiorari was filed within 90 days of that judgment on April 14, 1994, and was granted on May 31, 1994. The jurisdiction of this Court is properly invoked under 28 U.S.C. §1257(a).

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## **CONSTITUTIONAL PROVISION INVOLVED**

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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## STATEMENT OF THE CASE

### A. The Arrest of Evans and Seizure of Evidence

On January 5, 1991, at approximately 6:30 p.m., an officer of the Phoenix Police Department saw a car travelling the wrong way on the one-way street in front of the main police station. (Joint Appendix [hereinafter J.A.] at 16-17.) The officer made a traffic stop of the car and spoke with the car's driver, Respondent Evans. (*Id.* at 17-18.) After Evans told the officer that he had no driver's license because it had been suspended, the officer obtained Evans' name and ran the name on the computer in his patrol car. (*Id.* at 18.)

The computer search showed that Evans' license had been suspended and that he had an outstanding misdemeanor warrant for his arrest. (*Id.* at 19.) The officer would not have arrested Evans for driving on a suspended license, but did arrest him because of the outstanding warrant. (*Id.* at 23-24.) While placing handcuffs on Evans, the officer saw him drop a handrolled cigarette to the ground. (*Id.* at 20.) After determining that the cigarette smelled as if it contained marijuana, the officer searched Evans' car and found a baggie of marijuana under the passenger seat. (*Id.* at 21-22.)

After the arrest, the officer contacted his I-Bureau about the warrant, and was told that the warrant was still good. (*Id.* at 22.)

### B. The Motion to Suppress

Prior to his trial on the resulting charge of possession of marijuana, Evans filed a motion to suppress the marijuana because "he was arrested in violation of the Fourth and Fourteenth Amendments to the United States Constitution." (J.A. at 2.) Evans alleged that the misdemeanor warrant had actually been quashed 17 days before his arrest, and argued that the marijuana was therefore the fruit of an unlawful arrest. (*Id.* at 4.) Evans blamed police negligence for the warrant's presence in the computer system and argued that the "good faith" exception to the exclusionary rule recognized by this Court in *United States v. Leon*, 468 U.S. 897 (1984), did not apply "because it was police error, not judicial error, which caused the invalid arrest." (*Id.* at 4-5.)

### C. The Evidentiary Hearing

On April 15, 1991, the trial court conducted an evidentiary hearing on the motion to suppress. At that hearing, the State presented testimony from the arresting officer. The State also presented testimony regarding the standard procedure for quashing a warrant and removing it from the Maricopa County Sheriff's Office computer system.

The chief clerk of the East Phoenix Number One Justice Court brought her court's records regarding the warrant on Evans. (J.A. at 15-16.) She testified that the warrant had been issued on December 13, 1990, after Evans had failed to appear in the justice court on the preceding day. (*Id.* at 28-29.) On December 19, 1990, Evans appeared before a *pro tem* judge, who released him

on his own recognizance and quashed the warrant. (*Id.* at 29.)

The chief clerk also described the justice court's standard procedure for quashing a warrant: a clerk places a telephone call to the warrants section of the Maricopa County Sheriff's Office, advises them that a warrant has been quashed, and makes a note on the justice court file stating that the call has been made and indicating the person at the Sheriff's Office to whom the clerk has spoken. (*Id.* at 29, 33, 35.) Evans' justice court file contained no note indicating that the Sheriff's Office had been called about the quashing of the warrant. (*Id.* at 29, 32.)

The chief clerk acknowledged the possibility that a member of the clerk's office had made the call to the Sheriff's Office without making the required notation on the file, but concluded that in this case the call had not been made. (*Id.* at 29, 31-32.) She noted that Evans' case was unusual because a *pro tem* judge had quashed the warrant and he had not made the same notation on the file regarding the quashing of the warrant that the justice of the peace normally made. (*Id.* at 32, 35.) After she learned that Evans' warrant had remained in the Sheriff's Office computer system after the justice court had quashed it, the chief clerk conducted a search of the court files. (*Id.* at 37.) She discovered warrants in three other cases that had been quashed on the same day that Evans' warrant had been quashed; those three other warrants, like Evans', remained in the computer system and the corresponding justice court files, like Evans', contained no notations indicating that the Sheriff's Office had been informed. (*Id.*)

The State also presented testimony from a records clerk with the Maricopa County Sheriff's Office. She outlined the Sheriff's Office standard procedure when it receives a call that a warrant has been quashed: the date and time that the call was received, the name of the person making the call, and the court that the call is noted on the "recall warrants list"; the first, last and middle names of the person named in the warrant, his date of birth, and the warrant number and the date it was issued are obtained from the caller; the information received is compared with the information contained in the Sheriff's Office active file to verify that the information received matches that in the file; notations are made in the active file; an entry on the computer is made to clear the warrant from the system; finally, a warrant check is run on the system to make sure the quashed warrant has been removed. (*Id.* at 39-40, 45.)

The records clerk checked the Sheriff's Office file regarding the warrant on Evans and found no record that a call was ever received quashing that warrant. (*Id.* at 40-43.)

#### **D. The Trial Judge's Ruling**

The trial judge found that it made no difference whether justice court personnel or law enforcement personnel were to blame for the warrant's continued presence in the computer system. (*Id.* at 51-52.) He then granted the motion to suppress. (*Id.* at 53.)

### E. The Appeal

The State appealed from the ruling granting the motion to suppress. On May 19, 1992, in a 2-1 decision, Division One of the Arizona Court of Appeals reversed. The court of appeals first distinguished an Arizona appellate decision the trial judge had relied on by finding that in this case there was "no evidence that the arresting officers or the Phoenix Police Department were negligent in any way." (Pet. App. at 31a.) It went on to state that the trial judge had apparently overgeneralized the rationale behind the exclusionary rule. (*Id.* at 32a.) After noting this Court's repeated statements that the purpose of the exclusionary rule is to deter police misconduct, the court of appeals found that the police officers' conduct was objectively reasonable under *Leon*, that the clerical error that caused the quashed warrant to remain in the computer system was outside the control of the Phoenix Police Department, and that the purpose of the exclusionary rule would not be served by suppressing the marijuana. (*Id.* at 32a, 34a-35a.)

Evans then filed a petition for review by the Arizona Supreme Court. The supreme court took review and on January 13, 1994, in a 4-1 decision, vacated the court of appeals' decision and affirmed the suppression of the marijuana. The supreme court held that even if the responsibility for the computer error rested with the justice court, "it does not follow that the exclusionary rule should be inapplicable to these facts." (*Id.* at 5a.) The supreme court concluded that the exclusionary rule applied and required suppression of the marijuana. (*Id.* at 11a.)

### SUMMARY OF ARGUMENT

The exclusionary rule is not a personal constitutional right of the aggrieved party, but a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect. The primary purpose of the exclusionary rule is to deter future unlawful police misconduct, and its application is restricted to those situations where that purpose is effectively advanced. The police officer in this case acted in an objectively reasonable manner when he arrested respondent because a computer search informed him there was an outstanding warrant for respondent's arrest. Even though the warrant had actually been quashed, the warrant's continued presence in the computer was not the fault of police personnel, but of court personnel. There was no unlawful police misconduct to be deterred in this case. Therefore, the Arizona Supreme Court erred in applying the exclusionary rule to suppress the evidence seized pursuant to the arrest.

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### ARGUMENT

The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands. Thus, this Court has held that the exclusionary rule is not a personal constitutional right of the person whose Fourth Amendment rights have been violated, but a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect. *United States v. Leon*, 468 U.S. at 906;

*United States v. Calandra*, 414 U.S. 338, 348 (1974). Accordingly, whether to apply the exclusionary rule in a particular case is an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct. *Leon*, 468 U.S. at 906; *Illinois v. Gates*, 426 U.S. 213, 223 (1983).

Applying the exclusionary rule cannot cure the invasion of a defendant's rights he has already suffered. *Illinois v. Krull*, 480 U.S. 340, 347 (1987). In addition, application of the rule has substantial costs, as it often deprives the truth seeking process of relevant and trustworthy evidence. *Michigan v. Tucker*, 417 U.S. 433, 450 (1974). Further, indiscriminate application of the rule may well generate disrespect for the law and administration of justice. *Leon*, 468 U.S. at 908. Therefore, application of the rule is restricted to those cases where its remedial purpose will be most effectively served. *Calandra*, 414 U.S. at 348.

The primary purpose of the exclusionary rule is to deter future unlawful police misconduct. *Id.* at 347. Thus, evidence obtained from a search should be suppressed only if the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment. *United States v. Peltier*, 422 U.S. 531, 542 (1975).

The exclusionary rule is not designed to punish the errors of judges and magistrates. *Leon*, 468 U.S. at 916. Judges and magistrates are not members of the law enforcement team, and the "threat of exclusion thus cannot be expected significantly to deter them." *Id.* at 917. Thus, where a judge, not a police officer, makes "the

critical mistake" that leads to a Fourth Amendment violation, the exclusionary rule should not be applied. *Massachusetts v. Sheppard*, 468 U.S. 981, 990 (1984). "Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." *Leon*, 468 U.S. at 921.

In this case, the police officer's check of the computer in his patrol car informed him that there was an outstanding warrant for Evans' arrest. The officer, who had already seen Evans commit one violation of the law (driving the wrong way on a one-way street) and had heard Evans admit a second violation (driving with a suspended driver's license), arrested Evans based on the outstanding warrant. Evans did not tell the officer that the warrant had been quashed two weeks earlier. And, when the officer checked with his own police department's I-Bureau after the arrest, he was again told that there was an outstanding warrant for Evans' arrest. This officer "took every step that could reasonably be expected" of him. *Sheppard*, 468 U.S. at 989. He had no knowledge, and cannot properly be charged with knowledge, that the warrant had been quashed. The "critical mistake" that caused the Fourth Amendment violation in this case was made by justice court personnel who failed to have the quashed warrant removed from the computer system. Under these circumstances, the exclusionary rule should not be applied because doing so will not serve the rule's primary purpose.

In affirming the trial court's decision to suppress the marijuana, the Arizona Supreme Court declined to follow the framework this Court has established for determining whether to apply the exclusionary rule. First, the Arizona

Supreme Court focused on the fact that Evans' Fourth Amendment rights had been violated when he was arrested on a warrant that had been quashed two weeks earlier. That fact, however, was not at issue on appeal. Petitioner's position throughout these proceedings has been that despite the Fourth Amendment violation, the exclusionary rule should not be applied. As this Court has held, whether a Fourth Amendment violation has occurred is a separate issue from whether the exclusionary rule should be applied. *Leon*, 468 U.S. at 906; *Gates*, 426 U.S. at 223.

Second, the Arizona Supreme Court found it "unnecessary" to analyze the purposes served by the exclusionary rule. (Pet. App. at 4a, n. 1.) That position, however, contradicts this Court's statements that application of the rule is restricted to those cases where its remedial purpose is most effectively served. *Calandra*, 414 U.S. at 348.

Third, the Arizona Supreme Court described deterrence of police misconduct as "but one of the reasons that have been advanced" to support use of the exclusionary rule. (Pet. App. at 4a, n. 1.) Deterrence of police misconduct, however, is the primary purpose of the exclusionary rule. *Calandra*, 414 U.S. at 347. The Arizona Supreme Court did not specify what other purposes of the exclusionary rule were advanced by its use in this case, and this Court's decisions show that there are none. As noted above, curing the wrong suffered by the individual whose Fourth Amendment rights have been violated is not a purpose of the exclusionary rule. *Krull*, 480 U.S. at 347. Protecting the courts from reliance on untrustworthy evidence such as coerced statements may be a valid purpose of the exclusionary rule. *Tucker*, 417 U.S. at 448. The

evidence suppressed in this case, however, was relevant and material and in no way untrustworthy. Thus, the Arizona Supreme Court erred in suggesting that some other purpose of the exclusionary rule was served by suppressing the evidence in this case.

Fourth, the Arizona Supreme Court assumed that justice court personnel were responsible for the error that led to Evans' unlawful arrest. (Pet. App. at 5a.) It thus held, contrary to this Court's decision in *Leon*, that the exclusionary rule is designed to punish the errors of judges and magistrates. The fact that justice court employees and not the justice of the peace were responsible for the error is insufficient to distinguish this case from *Leon*. This Court stated in *Leon* that "there exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." 468 U.S. at 916. There is likewise no evidence suggesting that employees of judges and magistrates are any more inclined to engage in the type of conduct that would merit application of the exclusionary rule.

The Arizona Supreme Court sought to distinguish *Leon* by noting that the evidence seized in that case was obtained on the basis of a facially valid search warrant that was later invalidated, while noting that "no warrant at all was in existence at the time of [Evans'] arrest." (Pet. App. at 6a.) This factual distinction is unimportant, however. In both situations evidence was seized as a result of a Fourth Amendment violation. Neither violation is greater than the other and, in any event, application of the exclusionary rule turns not on the magnitude of the

violation but on whether excluding the evidence furthers the rule's purpose. The critical factor in *Leon* was that the police officer's conduct was objectively reasonable. This Court concluded that where an officer's conduct is objectively reasonable, excluding the evidence does not further the ends of the exclusionary rule in any appreciable way. 468 U.S. at 919-20.

In this case, the arresting officer's conduct was objectively reasonable. From the computer in his patrol car, the officer obtained information that there was a warrant for Evans' arrest. That information is the sort that an officer on the streets must necessarily rely on in performing his duties. The officer had no reason to know that the warrant was invalid: Evans did not protest and a later inquiry to his own police department's I-Bureau confirmed the warrant information. It was the justice court's responsibility to insure that the quashed warrant was removed from the computer system, and the evidence presented at the suppression hearing showed that the justice court did not meet its responsibility. Under these circumstances, the exclusionary rule should not be applied.

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## CONCLUSION

The judgment of the Arizona Supreme Court should be reversed.

Respectfully submitted,

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